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US conservative advocacy organizations and right-wing legal mobilization in Europe

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Abstract

Some recent work on populist conservative forces engaged in legal mobilization in Europe highlights the involvement of US-based conservative legal advocacy organizations and their European affiliates. These groups are linked to efforts to resist the integration of Europe and the power of the European courts to implement the projects of liberal, left-leaning pro-EU social forces. Little attention thus far has focused on the lawyers active in these advocacy groups, their ties to the American conservative legal movement and the transnational lawyer networks of which they are a part. This essay sketches an agenda for future research on the composition, operations, strategies and discourse of this complex constellation of conservative lawyers and their organizations.

Keywords: legal profession; conservative legal movement; right-wing populism

1 Introduction

America is undergoing a conservative legal counter-revolution in which non-state actors play important roles. They exercise considerable influence on the law through an infrastructure of organisations, lawyers and financial patrons advocating for the policy priorities of the diverse facets of the conservative legal movement. Although this movement is decades old, the 2016 presidential election gave it momentum, as President Donald Trump appointed judges recommended by conservative legal movement leaders, tapped lawyers active in this advocacy network to serve in his administration, and implemented policies advocated by key conservative organizations. Right-wing populists are just one part of the political coalition behind this effort, which also includes libertarians and business interests. But populist energy drives some of these legal campaigns – on abortion rights, LGBTQ+ rights, gun ownership, voting rights and affirmative action.

As explored in the articles in this special issue, similar political and legal developments are unfolding in parts of Europe in connection with disputes over human rights. Although the American and European experiences with right-wing legal mobilization are distinct and rooted in very different histories and institutional arrangements, they are linked through transnational networks and processes.

Scholars have examined some aspects of the operations of transnational networks of nongovernmental research and advocacy organizations, foundations, media outlets, churches, intellectuals and government officials active in battles over the meaning and reach of human rights law (e.g. Bob 2012, 2019a; Buss and Herman 2003; Duffy 2018; Fetner 2008; Haddad 2018; Harms 2022; Keck and Sikkink 1998; Mancini and Stoeckle 2018; McCrudden 2015). But there is much

more to learn about the transnational flow of ideas, actors and influence as it relates to right-wing legal mobilization in Europe. In particular, several of the articles in this special issue note the involvement of US-based conservative legal advocacy groups and their European affiliates in these developments (Blokker 2024b; Cliquennois *et al.*, 2024; Kocemba 2024), but little systematic research thus far has focused on the lawyers active in these organizations and the transnational networks of which they are a part.

This article offers a US perspective on the topic, identifying some of what we already know about the participation of US-based conservative legal advocacy groups in these contests and sketching an agenda for future research. It also suggests that we need to better understand the relationships between these organizations and ‘transnational legal orders’ – ‘collection[s] of legal norms and associated organizations and actors that shape the understanding and practice of law across national jurisdictions in a particular field’ (Shaffer and Halliday 2021, 171). The article first briefly describes the American conservative legal movement and the expansion in focus (i.e. from domestic to transnational processes) of some US-based conservative Christian advocacy groups. I then highlight examples of the involvement of some of these groups in advancing ‘rival rights’ claims (Bob 2019a) in Europe and their use of strategies and tactics that are familiar in the US context. I conclude by suggesting questions to guide future research on this subject.

1.1 A sketch of the American conservative legal movement

There is a large and growing scholarly literature on conservative legal mobilization in the US (e.g. Bennett 2017; Decker 2016; den Dulk 2008; Hacker 2005; Hollis-Brusky 2015; Hollis-Brusky and Wilson 2020; Kersch 2019; Lewis 2017; Southworth 2008, 2018, 2023; Teles 2008, 2009; Ziegler 2020). A brief synopsis will suffice here to provide background for what follows.

The American conservative legal movement began in the early 1970s, primarily in response to the expansion of civil rights, civil liberties, and the federal regulatory state (Southworth 2008; Teles 2008). Conservatives criticized ‘activist’ judges and the lawyers who worked with them to accomplish liberal legal change. Business leaders disliked the courts for permitting regulation of their commercial activities. Western landowners claimed that judicial rulings infringed on their property rights. Southerners resented how judges and lawyers had teamed up to dismantle segregation. Religious conservatives were outraged by the courts’ decisions on abortion and school prayer.

To reverse the gains made by legal liberals through the courts, conservatives mobilised to replace liberal and moderate judges with committed allies.¹ They groomed and vetted reliable conservatives for judicial appointments and more actively patrolled the nominations and appointments processes (Devins and Baum 2019; Teles 2009). These efforts increased the proportion of judges receptive to conservatives’ concerns.²

Conservatives also worked to address their disadvantages within the institutions that produce and legitimate ideas about law. Wealthy conservatives and their foundations invested in existing conservative think-tanks, such as the American Enterprise Institute and the Hoover Institution, and they established new ones, such as the Heritage Foundation, the Cato Institute and the Claremont Institute. They cultivated ideologically committed lawyers to formulate new legal arguments and recruited seasoned appellate litigators to give those arguments credibility (Hollis-Brusky 2015; Southworth 2008, 2023; Teles 2008). The law and economics movement introduced economic theory into the analysis of law and institutionalized it as a field of research in major law schools (Dezalay and Garth 2002, 276–277; Duxbury 1995, 330–419). Conservatives established

¹In 1987, the failed Supreme Court nomination of Robert Bork, an abortion opponent and vocal critic of *Roe v. Wade*, marked the beginning of a new and much more politicised, partisan and acrimonious approach to federal judicial nominations and confirmation processes.

²For data on liberal/conservative outcomes and voting by Supreme Court justices, see Epstein, Martin and Quinn 2022.

dozens of advocacy organizations in the image of public interest organizations of the political left to advance alternative visions of the public good (Epstein 1985; Southworth 2005). Religious conservatives created their own legal advocacy organizations (Bennett 2017; Lewis 2017) and new ‘Christian worldview’ law schools (Hollis-Brusky and Wilson 2020). The Federalist Society, founded in 1982, emerged as a powerful networking and credentialing organization for conservative and libertarian lawyers (Hollis-Brusky 2015; Southworth 2008; Teles 2008). Legal strategies that liberal legal advocacy groups had used to expand civil rights and civil liberties became effective weapons in fights over business and environmental regulations, the power of unions, affirmative action, boundaries between church and state, abortion, guns and much more.

‘Fusionism’, a synthesis of ideas about freedom and moral authority, helped to unite various strands of conservatives, libertarians and business interests behind the Republican Party for much of the past half-century. The same was true of lawyers associated with various causes of the conservative legal movement. Fusionism was the formula embraced by the Federalist Society at its founding, when it vowed to challenge what it said was the ‘orthodox liberal ideology’ that dominated law schools and the legal profession.³ The Federalist Society’s mission statement calls for ‘reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law’.⁴

Generating a theory of constitutional interpretation that would impede legal liberalism while advancing the conservative movement’s policy goals was one of the conservative legal movement’s shared projects in the 1980s (Teles 2009). The theory that emerged, ‘originalism’, looks to the framers’ understanding of the text of the Constitution and its amendments or to the original meaning of constitutional provisions at the time they were adopted. Early versions of originalism (and its close cousin, ‘textualism’) emphasised judicial restraint and served as a justification for criticising and challenging the civil rights and civil liberties decisions of the Supreme Court during the years when Earl Warren and Warren Burger served as chief justices (Bork 1971, 6–7; Scalia 1989, 863–864). But by the 1990s, with a conservative majority on the Supreme Court and conservative advocacy groups eager to use litigation to attack liberal laws and policies, originalism had morphed from a theory of judicial restraint into one justifying active judicial review (Balkin 2020, 102–108; Keck 2004, 282; Whittington 2004, 604). Originalism’s critics observe that the method’s malleability invites selective uses of history to achieve desired results and that its proponents often fail to apply it consistently (Gordon 2017, 361–381; Greene 2021, 79–82; Hasen 2018; Siegel 2022, 47–50; Tushnet 2020, 19–43). In the hands of conservative judges, originalism has served as a vehicle for challenging regulations and for restoring an earlier constitutional order that was more protective of traditional understandings about sex, sexuality, race and religion (Siegel 2023).

In the years following the Supreme Court’s 2015 ruling that same-sex couples have a constitutional right to marry⁵ and that the Civil Rights Act of 1964 protects employees against discrimination based on their sexuality or gender identity,⁶ social conservatives in the US have shown interest in alternative modes of constitutional interpretation. Adrian Vermeule, a Harvard law professor and conservative Catholic, argues that originalism has ‘outlived its utility’ and has impeded progress towards a ‘robust, substantively conservative approach’ to constitutional law and interpretation (Vermeule 2020). He says that the Constitution should be interpreted to advance ‘substantive moral principles that conduce to the common good’ – moral principles rooted in natural law and traditional values (Vermeule 2022). Vermeule’s ‘common good constitutionalism’ is a better approach than originalism for those who want the state to promote

³The Federalist Society’s first and only executive director, Eugene Meyer, is the son of Frank Meyer, who in the 1950s tried to unite traditionalists, libertarians, anti-Communists and neoconservatives around fusionism (Nash 1996, 321–322).

⁴About us, our purpose, <https://fedsoc.org/about-us> (accessed 18 November 2023).

⁵*Obergefell v. Hodges*, 576 U.S. _ (2015).

⁶*Bostock v. Clayton County*, 590 U.S. _ (2020).

morals/vice legislation., restrictions on LGBTQ+ rights, and religious observance (Schwartzman and Schragger 2022). Indeed, Vermeule advocates transforming the liberal state by means of ‘nonliberal actors [who] strategically locate themselves within liberal institutions and work to undo the liberalism of the state from within’ (Vermeule 2018).

Over the past several decades, conservatives have achieved litigation success on a host of issues, including guns, abortion, campaign finance, labour, affirmative action, gay rights, voting rights and economic regulation. Most relevant to the topic of this special issue, they have won major legal victories advancing the interests and values of Christian conservatives, using the powerful language of constitutional rights and working alongside extended networks of party leaders, politicians, activists and interest groups.⁷

Somewhat paradoxically, free speech frames have proven useful for promoting cooperation and building litigation alliances among groups claiming to represent different types of conservatives with varying policy commitments. During the years when Earl Warren served as chief justice of the Supreme Court (when liberals fought for the right to express controversial ideas), conservatives argued that countervailing values – tradition, family and morality – should trump expressive freedom (Batchis 2016, 5–6). But conservatives have since found free speech arguments helpful in advancing their policy goals (Batchis 2016; Kessler and Pozen 2018). Business interests have used free speech arguments to challenge economic regulations and union activities.⁸ Christian conservatives have deployed expressive freedom claims to protect the rights of abortion opponents to protest at clinics,⁹ to demand greater accommodation of religion in public and private spheres,¹⁰ to challenge a federal health statute’s mandate to cover contraception,¹¹ to resist campus speech codes, and to limit the reach of antidiscrimination laws,¹² even as some of them also have called for more limitations on curricula in public universities and bans on books in schools and libraries.¹³

The uneasy alliance of business interests, libertarians and social conservatives that cooperated for many decades under a banner of freedom and limited government has fractured, as the hard-right flank has taken control of the Republican Party and as the political identities of its populist elements have diverged from those of the business elites and the Republican establishment (Ahmari 2019; Continetti 2022). Right-wing populists assert that corporate America is controlled by ‘woke’ progressives and that it is more committed to its success in global markets than it is to the interests of ordinary Americans.¹⁴ Some right-wing populist leaders embrace Viktor Orban’s

⁷The gun rights movement followed a similar trajectory, eventually scoring big wins through the courts (Siegel 2008; Winkler 2013).

⁸e.g. *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011) (finding that a statute that prohibited the sale of information about medication prescriptions was unconstitutional because it restricted the speech rights of data miners); *Janus v. AFSCE*, 138 S. Ct. 2448 (2018) (holding that a statute that required public employee unions to pay a fee for the services the employees received from unions violated the First Amendment).

⁹See Wilson 2013, 15–17, 35–36.

¹⁰See, generally, Brown 2002; Lewis 2017. For one such recent case, see *Kennedy v. Bremerton School District*, 597 U.S. __ (2022) (finding that the free exercise and free speech clauses of the First Amendment protect a public high school football coach from reprisal for leading prayers on the field after games).

¹¹*Hobby Lobby v. Burwell*, 573 U.S. 682 (2014) (invalidating regulations imposing a contraception mandate under the Affordable Care Act).

¹²e.g. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 584 U.S. __ (2018) (addressing a baker’s objection to making a wedding cake for a gay couple); *303 Creative LLC v. Elenis*, 600 U.S. __ (2023) (finding that the First Amendment prohibits Colorado from requiring a website designer to create a wedding website for a gay couple).

¹³See Allen and Beier 2023.

¹⁴See Carpenter 2021; Heritage Foundation 2023, 10 (“Those who run our so-called American corporations have bent to the will of the woke agenda and care more for their foreign investors and organizations than their American workers and customers. Today, nearly every top-tier U.S. university president or Wall Street hedge fund manager has more in common with a socialist, European head of state than with the parents at a high school football game in Waco, Texas”), 47 (calling for the use of government contracts “to push back against woke policies in corporate America”); “WSJ Opinion: The Revolt Against Woke Corporations,” *Wall Street Journal*, May 17, 2023.

self-proclaimed ‘illiberal democracy’ as a model for postliberal politics in America (Zerofsky 2021), and some imagine a conservative, Christianized conception of the rule of law in which all legislative, administrative and judicial authority derives from natural law principles revealed through scripture (Linker 2023).

Struggles among various elements of the conservative legal movement mirror these tensions within the American political right. Elite lawyers associated with the Republican establishment took key positions in the administration of Donald Trump when he won the presidency in 2016, and some of them helped to thwart Trump’s efforts to overturn the results of the 2020 presidential election (Stahl 2022).¹⁵ Several lawyers who claimed allegiance to the MAGA movement and facilitated the scheme now face bar discipline and criminal sanctions.¹⁶ Some prominent conservatives argue that the Federalist Society has not done enough to distance itself from Donald Trump,¹⁷ while others assert that Federalist Society members are too eager to conform to the expectations of conservative legal elites and are insufficiently committed to fighting cultural battles; they vow to find more compliant lawyers in the next Republican administration.¹⁸

2 American conservative legal advocacy groups engage transnationally

American conservative Christian lawyers focused almost exclusively on the domestic arena until early in the first decade of the 21st century. European law informed their strategy primarily as it related to defensive concerns – how to prevent European human rights law from influencing rulings by American tribunals. However, these advocates thereafter found it useful – they might say necessary – to engage with the processes by which social orders ‘are legalized transnationally’ (Halliday and Shaffer 2015, 3).

In the early 2000s, liberal public interest lawyers who found their options narrowing under domestic law and in US tribunals experimented with new forms of transnational advocacy. With support from the Ford Foundation, the Open Society foundations and the American Civil Liberties Union (ACLU), they sought to ‘bring human rights home’ by importing favourable human rights law from Europe into US law (Bob 2012, 75; Cummings 2008; Soohoo, Albisa and Davis 2007). Conservatives resisted attempts to invoke international law and the decisions of international tribunals in US courts. They characterised these practices as extensions of American elites’ left-wing agenda – part of a strategy to override the will of majorities and to impose the international elite’s political values in defiance of the preferences of ordinary people. Supreme Court Justice Anthony Kennedy outraged social conservatives when he cited a European Court of Human Rights (ECtHR) decision in *Lawrence v. Texas*, a ruling that invalidated a Texas law criminalising gay sexual conduct.¹⁹ Another Kennedy opinion relied partly on international sources to find that the US Constitution prevented the death penalty for juveniles,²⁰ leading some

¹⁵For additional details, see the Transcript of House Select Committee Hearing, June 23, 2022, available at <https://www.npr.org/2022/06/23/1106700800/jan-6-committee-hearing-transcript>.

¹⁶For a summary of some of the sanctions imposed against lawyers involved in this effort, see Durkee (2024).

¹⁷In 2018, lawyers who were concerned about the direction the conservative legal movement was taking established a new organization, Checks & Balances, to serve as a network of conservative and centre-right lawyers, legal scholars and law students committed to defending the rule of law. In 2023, the group relaunched itself as the Society for the Rule of Law. See ‘About Us,’ on the webpage of the Society for the Rule of Law, <https://societyfortheruleoflaw.org/about/>, accessed 30 March 2024.

¹⁸Swan, Savage and Haberman 2023.

¹⁹*Lawrence v. Texas*, 539 U.S. 558 (2003) (citing *Dudgeon v. United Kingdom* [1981], Appl. No. 7525/76, Council of Europe: European Court of Human Rights, 22 October 1981, available at <https://www.refworld.org/cases,ECHR,47fdaf7d.html>).

²⁰*Roper v. Simmons*, 543 U.S. 551, 571 (2005) (citing foreign law in finding that the death penalty for juvenile offenders was ‘disproportionate’).

conservatives to call for Kennedy's impeachment.²¹ Justice Antonin Scalia railed against these uses of international sources in his scathing dissenting opinions.²²

Several of the lawyers whom I interviewed in 2001–2002 for a book on the American conservative legal movement (Southworth 2008) expressed similar views.²³ Twenty-five of the seventy-two interviewed lawyers worked for groups representing the perspectives of social conservatives and abortion opponents.²⁴ Some of them expressed disapproval of the influence of foreign law on US institutions. One such lawyer explained that he believed it was important to defend US 'sovereignty', which he said was under threat from the practice of transnational judicial borrowing from international law.²⁵ Another lawyer described a new strategic objective of his organization – to ensure that 'international agreements and international customs and so forth cannot supersede our constitutional rights'. He explained that '[m]ore and more interest groups are looking outside the law of the United States for a legal basis for what they want to have done inside the United States. . . . [W]e are seeing arguments being made in court that say, well, maybe there is no domestic law that says this, but there is an international agreement, or there are international customs, and as a member of the global community, etc., etc.'²⁶ Another lawyer explained that his organization was launching a 'project on international law and American sovereignty'.²⁷

In 2005, Benjamin Bull, then–chief counsel of the Alliance Defense Fund (later renamed Alliance Defending Freedom [ADF]), an organization founded in 1993 to suppress factional fighting among US Christian litigators by funnelling money to cooperating groups, described why American conservatives needed to combat the influence of international human rights law. Bull insisted that '[i]f the ACLU and its radical activist allies have their way, the laws of Europe will soon be the laws of America.'²⁸ ADF announced that it was 'tak[ing] on the international law movement' and its 'anti-Christian agenda':

[T]hese radical groups and like-minded judges began to improperly invoke foreign law – specifically from precedent-setting cases in leftist Europe – as a means to dissolve religious liberty, marginalize human life, and promote an anti-marriage culture in America. By using foreign law to interpret the Constitution, they seek to validate the enforcement of radical new "rights" that will advance the homosexual agenda, which poses a grave threat to the sovereignty of our nation and our God-given, constitutionally protected freedoms.²⁹

²¹See Toobin 2007, 198–199. Lawyers calling for Kennedy's impeachment included conservative icon Phyllis Schlafly, the leading opponent of the Equal Rights Amendment (to guarantee women the constitutional right to equal treatment), and Michael Farris, then-chairman of the Home School Legal Defense Association and now president and CEO of Alliance Defending Freedom. Kennedy was nominated by President Ronald Reagan, but some of his rulings, especially his rulings on gay rights and abortion, disappointed social conservatives. He co-authored the opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which held that restrictions on access to abortion cannot place an 'undue burden' on the right to abortion under *Roe v. Wade*. He also wrote the majority opinion in *Obergefell v. Hodges*, 576 U.S. _ (2015), which guaranteed the right to same-sex marriage.

²²e.g. *Roper v. Simmons*, 543 U.S. 551, 624 (2005) (Scalia, J. dissenting: 'The basic premise of the Court's argument – that American law should conform to the laws of the rest of the world – ought to be rejected out of hand').

²³The book drew from interviews with seventy-two lawyers who served conservative and libertarian nonprofit organizations. For more on the research design and characteristics of the interviewed lawyers, see Southworth 2008, 3–5, 189–191.

²⁴Southworth 2008, 46–52.

²⁵Confidential Interview 67.

²⁶Confidential Interview 59.

²⁷Confidential Interview 68.

²⁸<https://web.archive.org/web/20060422031711/http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=3587>.

²⁹'Defending religious freedom at home and around the world,' <https://web.archive.org/web/20120106043535/http://www.alliancedefensefund.org/Global>.

American religious conservatives also took the fight to Europe, insisting that the fates of Christian conservatives in the US and Europe were linked. Robert Bork, whose failed nomination to the serve on the US Supreme Court turned primarily on his views about the constitutionality of prohibitions on contraception and abortion, described '[i]nternational law and domestic constitutional law in the United States' as 'two battlegrounds in the same ideological war within and among the nations of the west' – both involving elites who 'employ non-democratic institutions to override the expressed desire of majorities' (Bork 2004). Addressing the apparent contradiction between insisting on 'sovereignty' at home while participating in legal battles overseas, ADF explained that '[c]onfining our fight to defending America from foreign law carries the significant risk of winning a domestic battle while potentially – in time – losing the world'.³⁰ These advocates recognized that investments in activities abroad sometimes pay dividends in domestic struggles.³¹

Several lawyers whom I interviewed in the early 2000s commented on those initiatives abroad. One advocate explained how his organisation decided to begin representing religious conservatives in Europe. 'You know, we'd win some cases in the [US] Supreme Court and began to get some recognition not only nationally but internationally, so we began getting requests for legal assistance from churches [in Europe and Russia] and obviously we couldn't handle them from the States.' He explained that his organization was 'developing lawyers throughout Europe, Christian lawyers' who could provide legal assistance to individuals and churches 'in connection with persecution or harassment issues, with an eye towards developing case law in the European Court of Human Rights'. He compared battles over human rights law in Europe to struggles over constitutional law in America during the early years of John Marshall's service as chief justice of the US Supreme Court, when major questions about the relationship between the federal government and the states and the relationship between the Supreme Court and the other branches were highly unsettled. 'In Europe,' he said, 'it's like the Marshall Court of 1810 in its very early formative stages, and so there's a lot of excitement.'³² Another lawyer described a need to protect conservative evangelicals: 'if one is not Lutheran or Catholic [in Europe], one is seen as a member of a cult.' He added that the American experience did 'not provide a perfect template for protecting such people', but that his group was 'looking to EU documents and the Helsinki Accords for legal hooks'.³³

There is now abundant evidence that America's culture wars have 'gone transnational' (McCrudden 2015) and that US-based organizations are important players in this transnational, conservative legal mobilisation (NeJaime and Siegel 2018). A review of Clifford Bob's 2012 book, *The Global Right Wing and the Clash of World Politics*, noted that 'the influence of American conservatives is hard to miss' in international battles over LGBTQ+ rights and gun ownership, for example, and that the "'global" networks seem to be constituted almost entirely by American actors, resources and ideologies' (Fordahl 2014). Several articles in this special issue flag the prominent role of US-based organizations in conflicts over abortion and gay rights. Cliquennois et al investigate how European private conservative Christian organizations are fighting with liberal NGOs in litigation before the ECtHR and the Court of Justice of the European Union (Cliquennois et al 2024). Blokker explores how conservative actors and institutions, including groups with strong US ties, are not only resisting progressive human rights claims but also asserting rights claims of their own (Blokker 2024b).

Since the early 2000s, two groups with strong links to the US – ADF International, the global arm of ADF, and the European Centre for Law and Justice [ECLJ], an affiliate of the American

³⁰'Defending religious freedom at home and around the world,' <https://web.archive.org/web/20120106043535/http://www.alliancedefensefund.org/Global>.

³¹See DeZalay and Garth 2002; Garth 2002.

³²Confidential Interview 49.

³³Confidential Interview 8.

Center for Law and Justice – have been especially active in Europe in legal fights over gay rights, religious expression and abortion, as described in several papers in this special issue. Other such US-based organizations include the C-Fam Center for Family & Human Rights, Family Watch International, Advocates International, National Organization for Marriage, National Right to Life, Family Research Council, the Becket Fund for Religious Liberty and Focus on the Family. These groups argue that the recognition of new human rights relating to abortion and sexuality violates natural law and the legitimate expectations of the people of sovereign nations.³⁴

ADF is now the largest and most successful of these organizations, both in America and on the global stage. ADF's litigation activities in the US focus primarily on abortion and gay rights and on advancing the interests of conservative Christians. In just the past twelve years, ADF has won fourteen Supreme Court victories, including *Dobbs v. Jackson Women's Health Organization* (2022),³⁵ which overturned *Roe v. Wade* (1973),³⁶ thereby eliminating a constitutional right to abortion, and *303 Creative LLC v. Elenis* (2023),³⁷ which found that a website designer had a right to refuse to make a wedding website for a same-sex couple. ADF also represented a group of doctors in a challenge to the Food and Drug Administration's approval of mifepristone, an abortion pill.³⁸ The organization hosts a 'Young Lawyers Academy' to prepare recent law school graduates and young lawyers to advocate for the organization's primary causes.³⁹ All graduates of the program join ADF's Allied Attorney Network, whose members ADF deploys to challenge 'an increasingly hostile culture and against an ever-encroaching state'.⁴⁰ Lawyers affiliated with the organization have moved into many top positions in federal and state legislative, executive and judicial branches (Kirkpatrick 2023).

ADF is also active beyond American borders. It claims to be 'the world's largest organization committed to protecting religious freedom, free speech, the sanctity of life, parental rights, and God's design for marriage and family'.⁴¹ Both domestically and internationally, it seeks what it calls 'generational wins' – 'precedent-setting victories that will positively impact law and culture for years to come' — with respect to each of its five areas of concern. The organization has seven offices outside the US, including in Vienna, Brussels, Strasbourg, Geneva and London, and it claims to 'advocate for . . . clients in courtrooms around the world', working together with an alliance of more than 4,600 lawyers.⁴² It has trained more than 2,600 law students from 230 law schools in thirty different countries through its Blackstone Legal Fellowship program.⁴³ The organization participates in a variety of law-making arenas, including the United Nations, the European Court of Human Rights, the Council of Europe, the Organization for Security and Cooperation in Europe and the Council of Europe. It claims to have 'played a leading role in 30 victories before the European Court of Human Rights'.⁴⁴ It is especially active in issues relating to gay and transgender rights, hate speech and abortion,

³⁴See Stefano Genmarini, 'Pro-life groups ask General Assembly to block pro-abortion nominee to International Court,' 12 October 2023, https://c-fam.org/friday_fax/pro-life-groups-ask-general-assembly-to-block-pro-abortion-nominee-to-international-court/, accessed 6 November 2023.

³⁵597 U.S. __ (2022).

³⁶410 U.S. 113 (1973).

³⁷600 U.S. __ (2023).

³⁸*FDA v. Alliance for Hippocratic Medicine*, 602 U.S. __ (2024) (finding that the plaintiffs lacked standing to challenge the FDA's actions regarding the regulation of mifepristone).

³⁹'Young Lawyers Academy,' <https://adflegal.org/training/young-lawyers-academy>, accessed 9 March 2024.

⁴⁰'Attorney network,' <https://adflegal.org/for-attorneys/attorney-network>, accessed 27 October 2023.

⁴¹'Who we are,' https://adflegal.org/about-us/who-we-are?sourcecode=10027965_r500&gad_source=1, accessed 28 October 2023.

⁴²ADF International, 'Advocacy,' <https://adfinternational.org/advocacy/>, accessed 28 October 2023; 'What is a generational win,' <https://adfinternational.org/about-us/generational-win/>, accessed 28 October 2023.

⁴³Blackstone Legal Fellowship,' <https://adflegal.org/training/blackstone>, accessed 27 October 2023.

⁴⁴'What is Alliance Defending Freedom?' 18 March 2024, <https://adflegal.org/article/what-alliance-defending-freedom>.

but it also advocates for homeschooling and parents' rights to resist public schools' curricula on sexuality and race.⁴⁵ It mobilises conservative media outlets to spread the word about local developments with broader implications.⁴⁶ ADF reported revenue of \$111 million in 2022, with \$5,224,709 spent on activities in Europe.⁴⁷

The European Centre for Law and Justice (ECLJ) in Strasbourg describes itself as 'a Christian-inspired organization' whose mission is 'the promotion and protection of human rights in Europe and worldwide'.⁴⁸ It represents individuals and groups before the European Court of Human Rights and the European Court of Justice and in the legislative process in the European Parliament and the European Commission. ECLJ is affiliated with the American Center for Law and Justice (ACLJ), an organisation founded by televangelist Pat Robertson in 1990 to defend and advance 'religious liberty, the sanctity of human life, and the two-parent, marriage-bound family'. ACLJ's chief counsel, Jay Sekulow, founded ECLJ in 1997. Sekulow has led US judicial confirmation battles on behalf of Christian conservatives (along with the Federalist Society's Leonard Leo) since the early 2000s, and he served as lead outside defence counsel in President Donald Trump's first impeachment trial. Dr. Grégor Puppincq, a French lawyer and lecturer at the Collegium Intermarium University in Warsaw, is ECLJ's director general. In 2022, ACLJ reported total revenue of \$24,339,064, with \$966,982 supporting its activities in Europe.⁴⁹

Conservative lawyers in the US are connecting with like-minded international advocates at events stressing national sovereignty and traditional values. For example, the Edmund Burke Foundation, founded in 2019 with the mission of 'strengthening the principles of national conservatism in Western and other democratic countries', has organised a series of international conferences to advance a new direction for conservatives built around nationalism (NatCon).⁵⁰ At the first NatCon conference in Washington, DC in 2019, Missouri Senator Josh Hawley (a Yale Law School graduate and the husband of the ADF lawyer representing doctors in the mifepristone litigation in the Supreme Court⁵¹) delivered an address on the growing divide between cosmopolitan elites and the rest of America; he said that the cosmopolitan class 'lives in the United States, but they identify as "citizens of the world"' and view globalization as 'a moral imperative'.⁵² Lawyers at NatCon conferences in London, Rome, Orlando, Brussels and Miami have voiced similar themes. In 2022, for example, ECLJ Director Grégor Puppincq delivered an address describing human rights as a field that has been captured by 'progressivist private groups', including the Open Society foundations, the Ford Foundation and global businesses. He explained that conservatives increasingly find themselves at odds with a system that minimizes national authority and defines human rights in ways that are incompatible with aspects of culture that conservatives want to preserve.⁵³ Puppincq also spoke at the

⁴⁵For more on the organisation's work in these areas, see 'Parental rights are guaranteed,' ADF International, <https://adfinternational.org/our-focus/parental-rights>, accessed 17 March 2024.

⁴⁶As Bob recounts in his discussion of the case of the Swedish pastor, Ake Green, who was indicted for violating a new law criminalising 'disrespect' for groups defined by sexual orientation, a global set of right-wing groups helped to rally support for his cause. ADF's Ben Bull told Bob that he offered to 'work with other lawyers' and 'pound the table in the Christian and secular media' (Bob 2012, 83).

⁴⁷Alliance Defending Freedom, 2022 Form 990, available at <https://www.guidestar.org/profile/54-1660459>; accessed 15 November 2023.

⁴⁸'About the ECLJ,' <https://eclj.org/about-us>, accessed 5 November 2023.

⁴⁹American Center for Law and Justice, 2022 Form 990, available at <https://www.guidestar.org/profile/54-1586817>; accessed 15 November 2023.

⁵⁰The Chair of NatCon is Christopher DeMuth, an American lawyer who led the American Enterprise Institute from 1986 to 2007.

⁵¹For more on Erin Hawley's background and advocacy in the mifepristone litigation, see Dias and VanSickle (2024).

⁵²Senator Josh Hawley's speech at the National Conservatism Conference, 18 July 2019, <https://www.hawley.senate.gov/senator-josh-hawleys-speech-national-conservatism-conference>.

⁵³Gregor Puppincq, 'The capture of human rights by supranational and progressivist private groups.' Address at the National Conservatism, Brussels Conference, 23–24 March 2022. <https://nationalconservatism.org/natcon-brussels-2022/presenters/regor-puppincq/>, accessed 9 November 2023.

2022 US Conservative Political Action Conference (CPAC) meeting, held for the first time in Budapest, where Viktor Orban served as the event's keynote speaker. (Fox News host Tucker Carlson also spoke at this meeting.) Rachana Chhin, Legal Counsel of ADF International, spoke in November 2023 at a 'Transatlantic Summit' in New York that was organized by the Political Network of Values, a 'global platform of worldwide political representatives and leaders who actively promote and defend the values of family, life and freedom'.⁵⁴ Speakers at the Transatlantic Summit also included representatives from the Heritage Foundation, Family Watch and C-Fam.⁵⁵

American-style originalism has little influence outside the US,⁵⁶ but varieties of 'common good constitutionalism' find receptive audiences in Europe among sceptics of international institutions and global governance.⁵⁷

3 Advancing rival rights claims and deploying tested tactics

As Blokker explains in his article for this special issue, populists in Europe do not just criticize human rights claims advanced by progressives; they also offer 'rival interpretations of rights, depicting conservative forces as victims of liberal human rights regimes, and repudiating authoritative statements of liberal organizations' (Blokker 2024b, citing Bob 2019a, p. 15). They invoke free speech and religious liberty arguments as the basis for resisting anti-discrimination laws, hate speech laws and buffer zones around abortion clinics. They frame their opposition to abortion in terms of a fundamental right to life. They assert parental rights to direct the upbringing and education of their children. Some of these rival rights claims are rooted in natural rights assertions about the foundations of law.

US-based legal advocacy groups and their European affiliates are active participants in advancing these rival rights claims. ADF International's website and newsletters include posts about pastors, protestors and ordinary people who have been victimized by laws that it says violate free speech rights.⁵⁸ In early 2024, two incidents – the hate crime prosecution of a parliamentarian in Finland who was prosecuted for her 'Bible-verse tweet' referring to same-sex relationships as 'shameful'⁵⁹ and the arrest of a woman engaged in silent prayer within a buffer zone around an abortion clinic in Birmingham, England⁶⁰ – featured especially prominently on the website.⁶¹ Paul Coleman, the executive director of ADF International, predicts that we will see 'more and more of these cases cropping up across Europe' over the next several years.⁶² Those episodes serve as powerful rallying cries for religious conservatives across national borders, as evidenced by their

⁵⁴'Political Network for Values, about us,' available at <https://politicalnetworkforvalues.org/en/>; accessed 15 November 2023.

⁵⁵'Transatlantic Summit 2023,' <https://politicalnetworkforvalues.org/en/what-we-do/transatlantic-summit/transatlantic-summit-v-new-york-2023/>, accessed 15 November 2023.

⁵⁶See Greene 2009; Rosenfeld 2004.

⁵⁷In an interview in late 2023, Adrian Vermeule expressed admiration for Hungary's resistance to the 'profoundly disruptive and chaotic' project of legal liberalism (Dobozi 2023). See also Sulyok 2023, p. 1092 (asserting that Vermeule's work 'offer[s] an opportunity to look at the common good in the context of the Fundamental Law of Hungary'); Hofer 2023 (arguing that 'common good constitutionalism has implications – and applications – for Europe as much as for North America'); Casey 2023 (describing the application of 'common good constitutionalism' within the Irish legal system).

⁵⁸See 'Protecting fundamental freedoms. Promoting the inherent dignity of all people,' <https://adfinternational.org>, accessed 2 November 2023.

⁵⁹See 'Prosecutor appeals Bible-tweet case to Finnish Supreme Court,' <https://adfinternational.org/news/prosecutor-appeals-bible-tweet-case-to-finnish-supreme-court>, accessed 9 March 2024.

⁶⁰e.g. 'Stand with Isabel,' <https://adflegal.org/support/isabel>, accessed 9 March 2024; 'Two MPs push for further crackdown on silent prayer despite outcry over "thought crime" arrests,' <https://adfinternational.org/en-gb/news/silent-prayer-crackdown>, accessed 9 March 2024.

⁶¹See 'Secure Religious Freedom Today,' ADF International, <https://adfinternational.org>, accessed 17 March 2024.

⁶²Zoltán Kottász, "'We have lost the essence of what a democracy is": An Interview with Paul Coleman,' *The European Conservative*, 23 September 2023, <https://europeanconservative.com/articles/interviews/interview-with-paul-coleman/>, accessed 5 November 2023.

frequent mention in fundraising appeals.⁶³ ADF International claims to work with free speech advocates around the globe to resist policies that amount to censorship by governmental and corporate actors.⁶⁴

There is also some evidence that strategies and tactics commonly used by cause lawyers in strategic rights campaigns of both the left and the right in America are employed by conservative Christian advocacy groups in Europe. Kocemba documents how abortion opponents in Poland combine litigation, legislation, and media strategies to further their objectives, an integrated advocacy approach long used by liberal and conservative groups in the US (Kocemba 2024).⁶⁵ Kocemba (2024) and Cliquennois et al (2024) emphasize the influence of *amicus* briefs and *amicus* coordination, important aspects of the repertoire of advocates of all political stripes in the US (Collins, Corley and Hamner 2014; Hazelton and Hinkle 2022).⁶⁶ And just as conservative advocacy groups have mobilised to influence judicial appointments in the US, some Christian-right advocacy groups seek to shape the processes by which European judges are selected. As Cliquennois et al note, ECLJ recently issued two reports on the European Court of Human Rights: one on the background of the judges on the court, finding that many of them previously worked for private foundations funded by the Open Society Foundations, and another finding that some judges had ruled in cases in which the organizations for which they had previously worked were parties, calling into question their impartiality.⁶⁷ C-Fam organised an unsuccessful effort to defeat the appointment of Sarah Cleveland to serve on the International Court of Justice, citing her support for abortion and LGBTQ+ rights. A petition contesting her appointment, signed by 350 pro-life groups worldwide, called her a ‘pro-abortion globalist’ who believes that ‘international experts can manufacture new human rights obligations regardless of what sovereign nations decide’.⁶⁸

An unsystematic review of the publications of these organizations suggests that their leaders have absorbed sociolegal scholars’ insights about ‘law in action’. Explaining why the public should not be satisfied that charges have been dropped against the Finnish parliamentarian accused of hate crime violations last year, ADF’s Paul Coleman emphasized that ‘the process becomes the punishment in these hate speech cases’,⁶⁹ borrowing a phrase coined by Berkeley Law Professor

⁶³e.g. ‘Global voices unite for free speech following Musk’s commitment to challenge “draconian” Irish “hate speech” law.’ Press release, ADF International, 29 January 2023, <https://adfinternational.org/news/irish-hate-speech-bill-video>.

⁶⁴See ADF International Press Release, ‘German government announces draft law introducing censorship zones around abortion-related facilities, fines up to 5,000,’ 29 January 2024, <https://adfinternational.org/news/bill-censorship-zones-germany/> (characterizing buffer zones around abortion clinics as ‘censorship zones’); ‘Dear Elon, let’s keep speech free on the digital marketplace of ideas,’ <https://adfinternational.org/open-letter-to-elon/>, accessed 28 October 2023 (urging Elon Musk to do more to make X [formerly Twitter] ‘a vital force for combatting state-sponsored censorship’ by paying the legal fees for individuals prosecuted for their tweets, citing the example of the ‘Bible-verse tweet’ prosecution).

⁶⁵Decades ago, some scholars argued that activist lawyers tend to embrace a simplistic view of the interplay between courts and social movements and to invest too heavily in litigation strategies. See, e.g., Rosenberg 1991; Scheingold 1974. Some socio-legal scholars questioned those claims, showing that many cause lawyers used litigation as part of an arsenal of strategies deployed in combination to secure favorable direct and indirect benefits for their clients (McCann 1994; Olson 1984; Silverstein and McCann 1998; Southworth 1999). More recently, socio-legal scholars have used the term ‘integrated advocacy’ to describe an approach that uses all available strategies and levers in combination to advance substantive ends (Cummings 2018, 2020).

⁶⁶For a discussion of the importance of this tactic in the campaign to deregulate election spending in the US, see Southworth 2023, 100–102.

⁶⁷See Grégor Puppincq, ‘Improving the Impartiality of the European Court,’ ECLJ, <https://eclj.org/geopolitics/echr/measures-aimed-at-providing-additional-safeguards-to-preserve-the-independence-and-impartiality-of-the-judges-of-the-european-court>, accessed 15 November 2023.

⁶⁸Lisa Correnti, ‘Pro-abortion extremist joins the International Court of Justice,’ C-Fam, 17 November 2023, https://c-fam.org/friday_fax/pro-abortion-extremist-joins-the-international-court-of-justice/, accessed 15 September 2024.

⁶⁹Zoltán Kottász, ‘We have lost the essence of what a democracy is’: An interview with Paul Coleman,’ *The European Conservative*, 23 September 2023, <https://europeanconservative.com/articles/interviews/interview-with-paul-coleman/>, accessed 5 November 2023.

Malcolm Feeley to describe the real costs to people accused of misdemeanours and lesser felony charges—not the fines and prison sentences imposed by the courts but the time and money spent dealing with the process (Feeley 1979). ECLJ’s website refers to Cliquennois’ book on the capture of the European human rights justice system by neo-liberal interests (Cliquennois 2020) as evidence of the need to mobilize Christian conservatives to resist the influence of globalists in these fora.⁷⁰ Leaders of some of these groups also appear to appreciate that frames and discourse are integral to the diffusion, competition, and institutionalization of ideas that drive the development of law.⁷¹ In an article on an effort to pass laws expanding anti-discrimination laws to reach sexual orientation, ADF International’s Paul Coleman insists that religious conservatives must not acquiesce in liberals’ characterization of conservatives’ objection to gay rights: ‘Framing religious liberty . . . – as a “right to discriminate” – has become common If we accept the idea that religious freedom is *a priori* discriminatory and can only be permitted under an exemption, the public’s attitude towards that once sacrosanct freedom will be forever changed.’⁷² In another statement, Coleman observes that ‘[i]n the language of “equality,” “diversity,” and “tolerance,” secularists have found a way to sideline and marginalize Christianity’.⁷³

Leaders of US-based groups and their European affiliates sometimes make explicit their understanding of the transnational stakes of their advocacy, as Coleman did when he warned that Americans should not follow Europe ‘down the path of censorship’ on hate speech as applied to anti-LGBTQ+ expression: ‘Europe has a free speech problem,’ he explained: ‘It should serve as a warning to the United States.’⁷⁴ Such statements reach international audiences through a wide range of publications and media outlets.⁷⁵ Similarly, an article on ECLJ’s website applauds a U.S. federal trial judge’s 2023 ruling (later overturned) that suspended the marketing of mifepristone, noting that ‘[a]lthough France does not have a legal system equivalent to that of the United States, this decision constitutes a legitimate step forward for the protection of women and future newborns from which France could draw inspiration’.⁷⁶

4 Conclusion: an agenda for future research

The right-wing populist legal mobilisation now underway in Europe is connected to fights between liberal and conservative forces worldwide, and it appears to receive a significant boost from some conservative US-based Christian groups and their affiliates. A narrative about liberalism and its association with moral decline, consumerism and hostility towards religion is a

⁷⁰Louis-Marie Bonneau, ‘The privatization of international law, about Gaetan Cliquennois’ book,’ ECLJ, <https://eclj.org/geopolitics/un/la-privatisation-du-droit-international-a-propos-du-livre-de-gaetan-cliquennois?lng=en>, accessed 9 November 2023.

⁷¹A vast literature across disciplines explores how frames and discourse shape how individuals, institutions, movement activists and policy-makers make sense of events, define problems and respond to them (Entman 2004; Gamson and Modigliani 1989; Snow and Benford 1992; Snow and Rochford 1986), and how frames and discourse sometimes shape judicial outcomes indirectly by mobilising popular support for legal claims (Hunter 2017; NeJaime 2013; Ziegler 2010). Rival frames often operate in the background of disputes over constitutional rights (Edelman, Leachman and McAdam 2010, 671; Epstein and Kobyłka 1992; Southworth 2023; Wilson 2013).

⁷²Paul Coleman, ‘Anti-discrimination “equality” law exemptions do not lead to fairness for all: an international perspective,’ *Public Discourse*, 2 April 2019, <https://www.thepublicdiscourse.com/2019/04/50721/>.

⁷³NR Interview, ‘Misunderstanding equality: religious liberty as a human-rights violation?’ *National Review*, 17 January 2013.

⁷⁴Paul Coleman, ‘Europe’s free speech problem: a cautionary tale,’ *Public Discourse*, 5 July 2016, <https://www.thepublicdiscourse.com/2016/07/17113/>.

⁷⁵e.g. Coleman 2012, 2014, 2023.

⁷⁶Medically induced abortion: what is happening in the U.S.? <https://eclj.org/abortion/un/ivg-medicamenteuse-que-se-passe-t-il-aux-etats-unis->

common thread in conservative populism in Europe and the United States, as is the related theme regarding threats to national sovereignty and mistrust of cosmopolitan elites and their global communities (Blokker 2019; Muller 2016).

The human rights field is an important arena of contestation in which conservative populists compete with liberal advocates to define key concepts and premises.⁷⁷ As Blokker shows, there is a ‘shared semiotics of civil society, even if highly contrasting claims are formulated’ (Blokker 2024a). There is also some overlap in the complaints by populists of the left and the right about the “‘thin’ framework of process and rights in legal liberalism as well as about democratic deficits in European institutions.”⁷⁸ But not all claims advanced by right-wing populist advocacy groups can be reconciled with the idea of an open, pluralistic and democratic civil society (Blokker 2024b; de Búrca and Young 2023; Kocemba and Stambulski 2024;). Some of their claims seem to invite authoritarian uses of state power to enforce traditional ideas about marriage and sexuality.

What is certain is that we need more systematic research on the goals, operations, strategies and discourse of this complex constellation of lawyers, organizations and patrons. Research should explore how these actors participate in the dynamic processes through which ‘norm making and practice at the international, national, and local levels interact’ and how ‘legal norms are developed, conveyed, and settled transnationally’ (Halliday and Shaffer 2015, 1). Attention to the interaction of opposing networks in these conflicts will help to illuminate the full range of strategies and effects (Bob 2012, 3; 2019b) and their relationship to movements and counter-movements and to competition within civil society over the meaning and prioritization of rights (Bob 2019a; Blokker 2024b).

With respect to the roles of US-based conservative legal advocacy organizations and their European affiliates in these fights, the following questions deserve attention: What do these advocates believe they have accomplished so far, and what do they still hope to achieve? Whom do they claim to represent? What are their primary sources of financial backing? How do they generate public support for their causes and recruit allies? When and how do these organizations sometimes forge alliances with groups that do not share all their political and religious commitments? How do their legal arguments, strategies and frames emerge and travel?⁷⁹ What have US-based groups learned from their European counterparts, and how do the former expect their efforts overseas to produce valuable reciprocal resources – arguments, strategies, discourse, favourable media coverage and judicial rulings – for use at home?⁸⁰

⁷⁷For a discussion of how legal indeterminacy can be used by authoritarians to consolidate power, see de Sa e Silva 2022, 200–201.

⁷⁸See Gasparini 2022 (describing dissatisfaction with European Union institutions by populists of the left and the right).

⁷⁹For one such example, McCrudden notes that intervenors in *Eweida v. United Kingdom* (2013) ECHR 37, including the ECLJ and the ADF, pointed to case law in the United States requiring “reasonable accommodation” of religious beliefs and practices as long as they do not impose an ‘undue hardship’ on the employer. The US Supreme Court recently redefined ‘undue hardship’ to require a showing of substantial increased costs. See *Groff v. DeJoy*, 600 U.S. — (2023).

⁸⁰McCrudden addresses ‘the extent to which US faith-based NGOs have leveraged the experience gained transnationally to use international and foreign jurisprudence in interventions before the US Supreme Court.’ He shows that some US religious groups “‘are beginning . . . to take advantage of their position as emerging transnational religious conservative “norm entrepreneurs”, by feeding particular interpretations of international and foreign law back into the American courts’ (McCrudden 2015, 455). For a recent example of this phenomenon, see Amicus Brief of the European Centre for Law and Justice in Support of Petitioners, *Dobbs v. Jackson Women’s Health Organization*, Dk. No. 19-1392 (explaining that the European Convention on Human Rights does not provide for a right to abortion); Cf. Brief of European Legal Scholars as Amici Curiae in Support of Neither Party, *Dobbs v. Jackson Women’s Health Organization*, Dk. No. 19-1392, July 28, 2021 (observing that the US Supreme Court had ‘previously . . . considered European law when interpreting the Constitution’ and noting that ‘the very same source of European law this Court previously invoked also allows prohibitions on abortion’).

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